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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CISCO SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF EDUARDO E.
SANTACANA IN SUPPORT OF CISCO'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL (ECF NO. 396)**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 I, Eduardo E. Santacana, declare:

2 1. I am an attorney licensed to practice law in the State of California and am an
3 associate with the law firm of Keker & Van Nest LLP, located at 633 Battery Street,
4 San Francisco, California 94111, counsel for Defendant Arista Networks, Inc. (“Arista”) in the
5 above-referenced action. Unless otherwise stated, the facts I set forth in this declaration are based
6 on my personal knowledge or knowledge I obtained through my review of corporate records or
7 other investigation. If called to testify as a witness, I could and would testify competently to such
8 facts under oath.

9 2. I submit this declaration in support of Cisco’s Administrative Motion to File
10 Under Seal (ECF No. 396) filed in connection with Cisco’s Reply in support of its Motion for
11 Partial Summary Judgment.

12 3. I have reviewed Cisco’s Motion to Seal and the Civil Local Rules of this Court
13 governing such motions, and submit this supporting declaration under Civil Local Rule 79-5(e).

14 4. Cisco’s Motion to Seal seeks to file under seal documents and information
15 referenced in Cisco’s Reply in Support of its Motion for Partial Summary Judgment (ECF No.
16 396-3). Cisco’s Motion for Partial Summary Judgment is a dispositive motion and therefore there
17 must be “compelling reasons” for protecting information from public disclosure. *Kamakana v.*
18 *City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Courts have found that “[o]ne
19 factor that weighs in favor of sealing documents [under the compelling reasons standard] is when
20 the release of the document will cause competitive harm to a business.” *Apple v. Samsung*, 727
21 F.3d 1214, 1221-22 (Fed. Cir. 2013); *Apple Inc. v. PsystarCorp.*, 658 F.3d 1150, 1162 (9th Cir.
22 2011) (“The publication of materials that could result in infringement upon trade secrets has long
23 been considered a factor that would overcome this strong presumption.”); *see also Nixon v.*
24 *Warner Commc’n, Inc.*, 435 U.S. 589, 598 (1978) (“common-law right of inspection has bowed
25 before the power of a court to insure that its records” are not used as “sources of business
26 information that might harm a litigant’s competitive standing”). Where public disclosure of
27 business information could harm a litigant’s competitive standing by placing it “in a diminished
28 bargaining position in future negotiations with potential customers and competitors,” there is a

1 compelling reason to seal the records at issue. *Ovonic Battery Co. v. Sanyo Elec. Co.*, Case No.
 2 14-cv-01637, 2014 WL 2758756, at *2-3 (N.D. Cal. June 17, 2014) (sealing portions of a
 3 pleading revealing highly confidential and sensitive financial and other terms of licenses); *see*
 4 *also* Fed. R. Civ. Proc. 26(c)(1)(G) (permitting sealing of “a trade secret or other confidential
 5 research, development, or commercial information”); *Krieger v. Atheros Commc’ns, Inc.*, No. 11-
 6 CV-00640-LHK, 2011 WL 2550831, at *1 (N.D. Cal. June 25, 2011) (sealing a presentation by a
 7 party’s investment advisor because it contained highly “sensitive and confidential information,
 8 including long-term financial projections, discussions of business strategy, and competitive
 9 analyses”); *TriQuint Semiconductor, Inc. v. Avago Techs. Ltd.*, Case No. 09-cv-1531, 2011 WL
 10 6182346, at *3 (D. Ariz. Dec. 13, 2011) (determining that there was a compelling reason to seal
 11 information that revealed the volume of a party’s sales). The public interest in access is reduced
 12 for materials that are “irrelevant to the Court’s decision,” even when they are associated with
 13 dispositive motions. *See, e.g., Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-07-
 14 06053 EDL, 2010 WL 841274, at *2 (N.D. Cal. Mar. 10, 2010). Such materials are “more akin to
 15 the ‘unrelated,’ non-dispositive motion documents the Ninth Circuit contemplated in *Kamakana*.”
 16 *Id.*

17 5. I submit this declaration to provide additional facts in support of Cisco’s
 18 Administrative Motion to Seal establishing that the “compelling reasons” standard has been met.

19 6. Cisco submitted the Declaration of Sara E. Jenkins in support of its Motion to Seal
 20 (“Jenkins Declaration”) (ECF No. 396-1) and a highlighted copy of Cisco’s Reply in Support of
 21 its Motion for Summary Judgment (per Civil L.R. 79-5(d)(1)(D)) indicating the specific text
 22 within the brief that should be sealed.

23 7. Paragraph 4 of the Jenkins Declaration lists, in table format, the material that Cisco
 24 seeks to file under seal. I address those materials below. Per the instructions provided on the
 25 Northern District of California’s website, this declaration is drafted so that it does not contain
 26 confidential information and does not need to be filed under seal. *See*
 27 <http://www.cand.uscourts.gov/ecf/underseal>.

I. REDACTIONS

8. The redactions in Cisco's reply brief at page 4:4–10 and page 11:23–12:3 are quotations and descriptions paraphrasing the highly confidential and competitive sensitive CONFIDENTIAL VERSION of the International Trade Commission's Opinion in *In the Matter of Certain Network Devices, Related Software, and Components Thereof (I)*, Investigation No. 337-TA-944. Compelling reasons support sealing those redactions for the same reasons as discussed below in connection with Exhibit 8 to the Declaration of John M. Neukom in Support of Cisco's Reply in Support of its Motion for Partial Summary Judgment.

9. The redactions in Cisco's reply brief at page 10:25–11:4 are quotations and paraphrases of Exhibit 1 to the Declaration of John M. Neukom in Support of Cisco's Reply in Support of its Motion for Partial Summary Judgment. Compelling reasons support sealing those redactions for the same reasons as discussed below in connection with Exhibit 1.

10. Arista does not oppose the public filing of the remainder of the highlighted portions of Cisco's reply brief.

II. EXHIBITS

11. Exhibit 1 to the Declaration of John M. Neukom in Support of Cisco's Reply in Support of its Motion for Partial Summary Judgment is an excerpt of the January 29, 2016 deposition of Adam Sweeney, which was designated by Arista "Highly Confidential – Attorney's Eyes Only." Compelling reasons support the sealing of Exhibit 1. The excerpts from Mr. Sweeney's deposition transcript discuss and disclose internal, non-public information regarding the development and development process of the Arista EOS software, including details regarding how certain technologies were integrated into Arista's products. There are compelling reasons to seal such sensitive confidential internal information regarding "product architecture and development[.]" See *Delphix Corp.*, 2014 WL 4145520, at *2.

12. Exhibit 2 to the Declaration of John M. Neukom in Support of Cisco's Reply in Support of its Motion for Partial Summary Judgment consists of Arista's Supplemental Response to Cisco's Fifth Set of Interrogatories (No. 26) and Ninth Supplemental Responses to Cisco's First Set of Interrogatories (No. 9). The charts contained in Exhibit 2 list the non-public names of

1 Arista engineers involved in product development and the non-public development history of
2 Arista's software. Compelling reasons support sealing those two columns of the charts submitted
3 as part of Exhibit 2.

4 13. Exhibit 3 to the Declaration of John M. Neukom in Support of Cisco's Reply in
5 Support of its Motion for Partial Summary Judgment is an excerpt of the February 25, 2016
6 deposition transcript of Arista CEO Jayshree Ullal. Compelling reasons support sealing Exhibit 3
7 because it contains competitively sensitive discussions concerning Arista's internal product
8 development process, including the tools Arista uses to develop its products, Arista's sales
9 strategies, and Arista's analyses of its competitors.

10 14. Exhibit 4 to the Declaration of John M. Neukom in Support of Cisco's Reply in
11 Support of its Motion for Partial Summary Judgment is an excerpt of the February 12, 2016
12 deposition transcript of Arista CTO Kenneth Duda. Compelling reasons support sealing Exhibit 4
13 because it contains competitively sensitive discussions concerning Arista's internal product
14 development process, the inner workings of its products and their technological capabilities,
15 Arista's strategies for winning customers, opinions concerning customer demands, and Arista's
16 analyses of its competitors.

17 15. Exhibit 5 to the Declaration of John M. Neukom in Support of Cisco's Reply in
18 Support of its Motion for Partial Summary Judgment is an excerpt of the March 17, 2016
19 deposition transcript of Arista's SVP for Customer Engineering Anshul Sadana. Compelling
20 reasons support sealing Exhibit 5 beginning at page 69 because it contains competitively sensitive
21 discussions concerning Arista's competitive analyses and testing, customer demands, sales
22 strategies, and the inner workings of Arista products. Arista does not object to the public filing of
23 the portion of Exhibit 5 before page 69.

24 16. Exhibit 6 to the Declaration of John M. Neukom in Support of Cisco's Reply in
25 Support of its Motion for Partial Summary Judgment is an excerpt of the January 21, 2016
26 deposition transcript of Arista's Lincoln Dale. Compelling reasons support sealing Exhibit 6
27 because it contains competitively sensitive discussion of Arista's internal deliberations
28

1 concerning the design of its software, Arista's software and source code design policies, strategies
2 for keeping and winning customers, and internal discussions concerning and analyzing sales.

3 17. Exhibit 7 to the Declaration of John M. Neukom in Support of Cisco's Reply in
4 Support of its Motion for Partial Summary Judgment is an excerpt of the February 19, 2016
5 deposition transcript of Arista's Hugh Holbrook. Compelling reasons support sealing Exhibit 7
6 because it contains competitively sensitive discussion of Arista's internal deliberations
7 concerning the design of its software, opinions concerning customer demand and sales strategies,
8 and the inner workings and technological capabilities of Arista's products.

9 18. Exhibit 8 to the Declaration of John M. Neukom in Support of Cisco's Reply in
10 Support of its Motion for Partial Summary Judgment is the entirety of the CONFIDENTIAL
11 VERSION of the International Trade Commission's Opinion in *In the Matter of Certain Network*
12 *Devices, Related Software, and Components Thereof (I)*, Investigation No. 337-TA-944.
13 Compelling reasons support the sealing of the entire confidential version of the Commission
14 Opinion, issued June 23, 2016, because it is replete with competitively sensitive confidential
15 business information related to, among other things, the operation of Arista's products that was
16 provided to the U.S. International Trade Commission under an Administrative Protective Order.
17 The confidential version of the Commission Opinion contains information designated by Arista as
18 confidential business information pursuant to Commission Rule 201.6, which defines confidential
19 information as: "information which concerns or relates to the trade secrets, processes, operations,
20 style of works, or apparatus, or to the production, sales, shipments, purchases, transfers,
21 identification of customers, inventories, or amount or source of any income, profits, losses, or
22 expenditures of any person, firm, partnership, corporation, or other organization, or other
23 information of commercial value, the disclosure of which is likely to have the effect of either
24 impairing the Commission's ability to obtain such information as is necessary to perform its
25 statutory functions, or causing substantial harm to the competitive position of the person, firm,
26 partnership, corporation, or other organization from which the information was obtained, unless
27 the Commission is required by law to disclose such information." 19 C.F.R. § 201.6(a)(1).
28 Arista previously requested confidential treatment for certain portions of the Commission

1 Opinion. The Commission has not yet released a public version of the Commission Opinion. In
2 any case, no redacted portion of the forthcoming public version of the Commission Opinion
3 should be made publicly available in this case.

4 Executed July 25, 2016, at San Francisco, California.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct.

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EDUARDO E. SANTACANA